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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 259  
DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

**FILED**  
08/27/2020 8:49 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Changes to Fire Service Professional Denial and Revocation Standards and Processes.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2020 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

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Filed By:  
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**NEED FOR THE RULE(S):**

These proposed rule changes provide amendments and changes to the standards and processes that govern denial and revocation for fire service professional certifications issued by DPSST. The Board is responsible for setting the minimum standards for training and certification for fire service professionals. To ensure that the standards adopted by the Board remain relevant and applicable to the Oregon fire service profession, standards are reviewed regularly.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

The Fire Policy Committee (FPC) and the Board on Public Safety Standards and Training (Board) meeting minutes are available on the Department of Public Safety Standards and Training website, [www.oregon.gov/dpsst](http://www.oregon.gov/dpsst). The DPSST staff memos prepared for each entity are available by submitting a records request to DPSST.

**FISCAL AND ECONOMIC IMPACT:**

There are no fiscal impacts identified for this rule amendment. The rule change amends fire service professional certification denial and revocation standards and processes.

The rule change does not change the potential fiscal and economic impacts that already exist. The ongoing potential fiscal and economic impacts for denial or revocation of certifications include administrative costs and legal fees for the Department and loss of potential income for a fire service professional who has certifications that have been denied or revoked and those certifications were associated with financial benefits for obtaining and maintaining Oregon fire certifications.

The denial or revocation of a fire service professional's certifications does not prevent the person from seeking or

obtaining employment or utilization by an Oregon fire service agency. Oregon fire service certifications are voluntary. Individuals are not required to obtain a certification and fire service agencies are not required to employ or utilize fire service professionals who have obtained certification. Each Oregon fire service agency maintains the discretion on whether or not to employ or utilize a fire service professional who has been denied or revoked for certification.

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**COST OF COMPLIANCE:**

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

There were no state agencies, members of the public, or units of local government, including fire service agencies, that were identified as likely to be economically affected by the rule changes.

The Department estimates that there are five or fewer Oregon fire service agencies that are private safety agencies that are subject to this rule and potentially considered small businesses. There were no changes or costs for compliance with the proposed rule identified for small businesses with regard to reporting, recordkeeping, professional services, equipment, supplies, labor or increased administration activities.

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**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

Potentially affected entities were involved through their representation on the Fire Policy Committee and the Board on Public Safety Standards and Training. Small businesses, public and private safety agencies, state agencies, units of local government and the public are invited to submit written comments to the agency rules coordinator during the public comment period on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact on business.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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**RULES PROPOSED:**

259-009-0059, 259-009-0115, 259-009-0120, 259-009-0125, 259-009-0130

AMEND: 259-009-0059

RULE SUMMARY: OAR 259-009-0059 outlines the minimum standards for certification as a fire service professional.

In this rule, the notification of conviction requirements found in section (6) are amended. Instead of notifying the employer and then the employer notifying DPSST, fire service professionals will be required to notify DPSST directly if they are convicted of a crime. This change is not intended to replace any employer reporting requirements. Fire service professionals will still need to report the conviction to their employer following any employment-related policies for reporting convictions, arrests, or other law enforcement actions.

Section (7) is deleted. The concept of the core values of integrity and professionalism are relocated to OAR 259-009-0120 (1).

**CHANGES TO RULE:**

Minimum Standards for Certification as a Fire Service Professional ¶¶

(1) To be eligible for a DPSST fire certification, fire service professionals must:¶¶

(a) Be utilized or employed by an Oregon fire service agency;¶¶

(b) Be at least 18 years of age;¶¶

(c) Have been fingerprinted for the purpose of DPSST-issued fire service professional certifications;¶¶

(d) Have no criminal history that would preclude the person from holding DPSST-issued fire service professional certifications;¶¶

(e) Successfully complete the training requirements adopted for each level of certification applied for; and¶¶

(f) Submit an application for certification through a Department-approved submission process.¶¶

(2) Training used to meet the requirements for a DPSST fire service professional certification must have been completed after the fire service professional has reached the age of 16.¶¶

(3) Fingerprints.¶¶

(a) The Department requires fingerprinting at the time of application for certification for any individual employed or utilized by a fire service agency if the applicant has not previously been fingerprinted for the purpose of DPSST-issued fire service professional certifications.¶¶

(b) A fire service agency may submit fingerprints with an application for personnel affiliation with subsequent certification at the time of utilization or employment if the fire service agency requires the fire service professional to obtain DPSST fire service professional certifications as a condition of their utilization or employment by the fire service agency.¶¶

(c) Fingerprints must be submitted to the Department on a standard applicant fingerprint card or through a Department-approved vendor of electronic fingerprint capture services, with the appropriate processing fee.¶¶

(4) When a fire service professional submits an application for certification or a fire service agency submits an application for personnel affiliation with subsequent certification, the Department will verify that the applicant meets the minimum standards for training and certification as defined in these rules.¶¶

(5) Denials of an application for certification or an application for personnel affiliation with subsequent certification will be processed in accordance with OAR 259-009-0120 through OAR 259-009-0130 and the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.¶¶

(6) Notification of Conviction:¶¶

~~(a) A certified fire service professional or instructor who is convicted of a crime while employed or utilized by a fire service agency, must notify the agency head within five business days of the conviction.¶¶~~

~~(b) When an agency receives notification of a conviction from a certified fire service professional, instructor, or another source, the agency must notify the Department within 30 business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.¶¶~~

~~(c) If not employed or utilized by a fire service agency, a certified fire service professional who is convicted of a crime must notify the Department within five business days.¶¶~~

(7) The Board has defined core values that are integral to certification as a fire service professional. These values are:¶¶

(a) Integrity. Integrity is defined as honesty, trustworthiness, truthfulness, accountability and ethical behavior; and¶¶

(b) Professionalism. Professionalism is defined as accountability, exercising judgment and behavior expected of a fire service professional and conduct becoming a fire service professional must notify the Department within 10 calendar days of the conviction. Notification must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

Statutory/Other Authority: ORS 181A.355, ORS 181A.410

Statutes/Other Implemented: ORS 181A.355, ORS 181A.410

ADOPT: 259-009-0115

RULE SUMMARY: This proposed rule change adopts guidelines for surrendering fire service professional certifications. If a fire service professional asks DPSST to accept surrender of certifications and they are the subject of a pending case, investigation or complaint, DPSST may require the person to stipulate to a revocation of the certifications. When a fire service professional stipulates to a revocation they become permanently ineligible for certification.

CHANGES TO RULE:

259-009-0115

Surrendering Certifications

(1) A fire service professional may request that the Department accept the surrender of their fire service professional certifications. The request must be submitted in writing.¶

(2) The fire service professional will remain certified until the Department accepts the surrender.¶

(3) In considering whether to accept the surrender, the Department may request further information from the present or prior employer pursuant to ORS 181A.670, or conduct its own investigation, to determine if any minimum standards for certification have been violated. If the Department finds a violation of the grounds for revocation as defined in OAR 259-009-0120, the Department may proceed with initiation and review of a professional standards case pursuant to OAR 259-009-0125.¶

(4) If the fire service professional has been issued a Notice of Intent pursuant to OAR 259-009-0130 or is the subject of a pending complaint, Department investigation or professional standards case, the Department may accept the surrender through a stipulated order revoking certification.¶

(5) An individual with fire service professional certifications revoked pursuant to this rule is permanently ineligible for certification as a fire service professional.

Statutory/Other Authority: ORS 181A.410, ORS 181A.640, ORS 183.341

Statutes/Other Implemented: ORS 181A.410, ORS 181A.640, ORS 183.341, ORS 181A.630, ORS 181A.650

AMEND: 259-009-0120

RULE SUMMARY: OAR 259-009-0120 defines the grounds for denial or revocation of fire service professional certifications. This proposed rule includes the following recommended changes:

#### Mandatory Grounds-

-Adds conviction of a bias or hate crime to the mandatory denial/revocation standards. These convictions are permanent disqualifiers. A bias or hate crime has the definition given by the jurisdiction where the conviction occurred. In Oregon, that definition is ORS 166.155 and ORS 166.165.

-Adds registration as a sex offender to the mandatory denial/revocation standards. Under the current rules, registration as a sex offender is a discretionary review trigger. This recommendation means registration as a sex offender would always require denial or revocation.

-Amends the definition of a discharge for cause to include intentional conduct performed under the color of office that constitutes discrimination against a protected class. This changes the category of Mistreatment Due to Bias to Discrimination.

#### Discretionary Grounds-

-Limits discretionary review of felony convictions to felony convictions that occur within 10 years prior to application for certification or while certified and discretionary review of misdemeanor convictions to convictions that occur within 5 years prior to application for certification or while certified. If the fire service professional is currently certified and is convicted of a felony or a misdemeanor, the conviction would trigger a review. For new applications for certification (including the E-1 Application for Personnel Affiliation and Certification Eligibility), discretionary felonies that occurred within the 10 years prior to application and discretionary misdemeanor convictions that occurred within the 5 years prior to application would trigger a review. Felony convictions older than 10 years and misdemeanor convictions older than 5 years would not require review and would not be considered grounds for denial/revocation. Adding the 10-year and 5-year time frames to the conviction trigger recognizes the passage of time as mitigation to the past misconduct.

-Amends how misdemeanor convictions are defined as discretionary grounds for denial/revocation. This changes the criteria for review of misdemeanor convictions to focus on the types of misconduct involved in the conviction (under current process a case is opened based on the misdemeanor classification of the conviction and circumstances at the time of application). As proposed, DPSST would review all misdemeanor convictions that occur within 5 years prior to an application for certification or when a conviction occurs after certification to determine if the conviction includes any of the listed elements. DPSST would open a case for review when a misdemeanor conviction includes one or more of the elements – by nature of the crime or the underlying conduct in the case. The elements are dishonesty or deceit, a sexual offense, a drug offense, discrimination, destruction of property, a crime against a public agency, illegal use or possession of a deadly weapon, or violence, abuse or neglect against a person or animal.

#### Other-

- Instructor certification references are removed from the fire service professional denial and revocation standards. This recommendation recognizes that the DPSST instructor certifications for course instruction are separate and

distinct from fire service professional certifications. Instructors are required to be certified to deliver training courses certified by DPSST. This ensures the instructor has the qualifications established by either the NFPA or NWCG for the specific training being delivered. This instructor certification process does not result in issuance of a fire service professional certification. DPSST does issue fire service professional certifications such as the Fire and Emergency Services Instructor I, II and III, Live Fire Instructor and Live Fire Instructor in Charge. These certifications remain subject to denial/revocation because they are fire service professional certifications.

CHANGES TO RULE:

259-009-0120

Grounds for Denial or Revocation ¶¶

~~(1) It is the responsibility of the Board to set the standards and for the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards will be upheld at all times, unless the Board determines that the safety~~  
The Board recognizes the core values of integrity and professionalism as critical to upholding the public's trust in the certification of fire service professionals, protecting the public, and ensuring that the conduct of a certified fire service professional or an applicant does not reflect adversely on the fire service as a public safety profession. The Board finds by adopting this rule that a violation of these standards is substantially related to certification as a fire service professional and a violation of the public or respect of the profession is compromised  
core values of integrity and professionalism.¶¶

~~(2) The Department must deny or revoke the certification of any a fire service professional or instructor, after written notice, and a hearing if requested,~~  
s certifications based upon a finding that:¶¶

~~(a) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in 137.700;~~¶¶

~~(b) The fire service professional or instructor has a conviction in any jurisdiction for any offense involving a bias or hate crime;~~¶¶

~~(c) The fire service professional is a sex offender pursuant to ORS 163A.005 (6); or~~¶¶

~~(d) The fire service professional has been discharged for cause from employment as a fire service professional or instructor.~~¶¶

~~(e) For~~  
For the purposes of this rule, "discharged for cause" means an employer initiated termination of employment for conduct that falls within any of the following categories and that occurred while acting under intentional conduct performed under the color of office that constitutes any of the e  
color of office-  
lowing:¶¶

~~(A) Interference in a Fire Investigation: Includes the creation or use of falsified evidence, reports or records, and includes false testimony;~~¶¶

~~(B) Theft or Fraud: Includes theft of services or property, embezzlement, misuse of resources, or falsification of contracts, reports or records;~~¶¶

~~(C) Intimidation: Includes wrongfully compelling an individual to abstain from doing, or to do, any act which that the individual has a legal right to do or abstain from doing;~~¶¶

~~(D) Corruption: Includes the abuse of a fire service professional's authority for personal gain, to gain advantage for a public or private safety agency or to attempt or succeed in depriving another person or persons of their legal rights;~~¶¶

~~(E) Neglect of Duty: Includes the intentional or reckless failure to perform any mandatory duty as required by law; knowingly performing an act which the fire service professional or instructor knows to be forbidden by law to perform, behavior that endangers the health and safety of the employee or others;~~¶¶

~~(F) Cheating: Includes actual, intended, or attempted deception or dishonest action by a fire service professional or an instructor in relation to the administration or documentation of any training, testing or certification;~~¶¶

~~(G) M~~  
Distreatment Due to Bias: Includes withholding or denying services, intentionally harassing, crimination: Discrimination includes a course of conduct or cau  
a sing physical injury to another person because e  
gregious act that evidences discrimination based of n the actors'  
fire service professional's perception of that a person's race, color, national origin, sex, religion, sex, age, marital status, sexual orientation, medical condition or disability,  
age,

disability or any other protected class as defined by state or federal law;¶

(H) Harassment, including Sexual Harassment: Includes unwanted, unwelcomed and uninvited behavior that demeans, threatens or offends the victim and results in a hostile environment for the victim;¶

(I) Abuse, including Sexual Abuse: Includes physical or mental maltreatment ~~which~~that results in mental, emotional, sexual or physical injury; or¶

(J) Use of illegal drugs.¶

~~(d3) The Department may stay any action against the certification of a fire service professional or instructor who has been reported as being discharged for cause until a final employment determination has been made.~~¶

~~(e) The Department will administratively close any case in which an arbitrator issues an opinion indicating that the discharge of a fire service professional or instructor is not supported by the underlying facts.~~¶

~~(3) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, deny or revoke a fire service professional's certifications based upon a finding that:~~¶

~~(a) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;~~¶

~~(b) Notwithstanding section (2), t(A) The fire service professional or instructor has been has a convicted of on for any offense punishable as a crime in this state or any other jurisdiction, the elements of which violate the core values as defined in OAR 259-009-0059; and~~¶

~~(A) The conviction is for a crime classified as a felony;~~¶

~~(B) The elements of the crime for which the fire service professional or instructor is convicted are sexual in nature or require active registration as a sex offender;~~¶

~~(C) The crime for which the fire service professional or instructor is convicted is against a public agency, other than the mandatory grounds defined in section (2) of this rule, for which a maximum term of imprisonment of more than one year may be imposed under the law of the jurisdiction where the conviction occurred; and~~¶

~~(DB) The conviction constitutes the fifth or more criminal conviction by the fire service professional or instruct occurred while certified or within the last five years; or~~¶

~~(E) If an 10 years prior to application for certification is submitted and t; or~~¶

~~(c)(A) The fire service professional or instructor has a conviction for a crime designated under the law where the conviction occurred as punishable withny offense, other than the mandatory grounds defined in section (2) of this rule, for which a term of imprisonment of more than 30 days but not more than 364 days; and~~¶

~~(i) The conviction resulted in a period of imprisonment for any period of time within the last five years;~~¶

~~(ii) The fire service professional or instructor is currently on a form of court-ordered supervis may be imposed under the law of the jurisdiction where the conviction occurred;~~¶

~~(B) The conviction occurred while certified or within the 5 years prior to application for certification; and~~¶

~~(C) The crime or the underlying conduct includes dishonesty or deceit, a sexual offense, a drug offense, discrimination, destruction; or~~¶

~~(iii) The fire service professional or instructor has unpaid restitution, court fines or fees resulting from the conviction.~~¶

~~(4) Guidelines for Denial or Revocation Basf property, a crime against a public agency, illegal use or possession of a deadly weapon, or violence, abuse or neglect against a person or animal.~~¶

~~(4) The certification standards defined oin Discretionary Disqualifying Misconduct.~~¶

~~(a) The Department may take action on any conviction identified in section (3) of this rule that occurred after January 15, 2008;~~¶

~~(b) Convadministrative rule in effect on the date the Department or the Board determined that the fire service professional violated the standards for certification will continue to apply until the Final Order has been issued and all appeal rights have been exhausted regardless of whether the certifications that occurred seven years or more prior to the date standards have been subsequently amended or repealed.~~¶

~~(5) Any Board or Department action to deny ofr review may be appropriate for summary staff disposition or administrative closure by the Department toke a fire service professional's certifications will be administered in~~

accordance with OAR 259-009-0115 through OAR 259-009-0130 and the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640, ORS 181A.650

AMEND: 259-009-0125

RULE SUMMARY: OAR 259-009-0125 outlines initiation and review of a professional standards case through DPSST review, Fire Policy Committee (FPC) review and Board review. This proposed rule change includes the following changes to the DPSST and FPC processes.

-Section (2) provides interpretation on how a past conviction or conduct will be treated if the conviction or conduct was not a disqualifier prior to this rule change. As long as the past conviction or other past conduct has already been reviewed by DPSST or the FPC and the Board and determined not to have violated the certification standards under the rules in place at the time of review, the same conviction or conduct would not result in a new review if the rules and standards changed.

-Under section (5), DPSST will not open a discretionary case to review a conviction when all of a fire service professional's certifications are lapsed. DPSST will initiate the review of the conviction when the fire service professional applies for a new certification or to reinstate lapsed certifications.

-Section (6) adds an opportunity for the fire service professional to submit mitigation to the FPC as in-person, verbal statements. This does not replace written mitigation. The fire service professional can do either, both or neither.

-Under section (7) and the FPC review process, the list of predetermined circumstances included in the current rule text that may be considered as aggravation or mitigation is deleted. This content is replaced with the Board's general interpretation of what aggravating and mitigating circumstances are and how they affect denial and revocation recommendations.

-The proposed rule changes also eliminate the 30-day to seven-year ineligibility period that follows a discretionary determination to deny or revoke certification. Under the proposed rule, if certification is denied or revoked, the fire service professional may reapply for certification after one year has passed after the Board approves the denial/revocation. When the application is submitted, DPSST will review the application and the standards in place at the time of the application. If the conviction is still considered a trigger for discretionary review, DPSST will open a case for FPC review.

The FPC will review the conviction and any additional mitigation, which will always include the passage of additional time, to determine if there is still an impact to certification as a fire service professional. With each review, the FPC would be able to recommend denial if there is still an adverse impact to fire certification. Eventually, the passage of time would mean that the conviction would no longer require review. Once the felony conviction was older than 10 years or the misdemeanor conviction was older than 5 years, it would no longer be considered grounds for denial and would not require any additional FPC review when the fire service professional submits an application for certification.

CHANGES TO RULE:

259-009-0125

Cases Submitted to the Board through the Fire Policy Committee - Denial/Revocation - Initiation and Review of a Professional Standards Case

(1) ~~If~~ When the Department determines that it receives information from any source that a certified fire service

professional or instructor may have engaged in discretionary misconduct listed in OAR 259-009-0070 (3), the Department may submit a case to the Board, through the Fire Policy Committee.¶

~~(2) The Fire Policy Committee will review a case an applicant may not meet the established standards for fire service professional certification, the Department will review the information to determine if substantial evidence exists to support denial or revocation of certifications under the statutory and administrative rule requirements for fire service professional certification.¶~~

~~(2) The Department will not open a case on a conviction or conduct that was previously reviewed by the Department or the purpose of recommending to Fire Policy Committee and the Board whand dether or not there is a reasonable basis to deny or revoke certifications and to recommend a period of ineligibility.¶~~

~~(3) Prior to presentation to the Board, through the Fire Policy Committee, the Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writ mined not to violate the standards for fire service professional certifications or resulted in no action to deny or revoke certification using the administrative rules in effect at the time of the review.¶~~

~~(a) Nothing in this rule precludes the Department from opening a case upon discovery of additional mandatory or discretionary grounds for denial or revocation.~~¶

~~(b) Nothing; information f this rule precludes the Department or the Fire Policy Committee and the Board's from consideration.¶~~

~~(4) The Fire Policy Committee and Board may also consider mitigating previous misconduct or criminal behavior as and aggravating circumstances including, but not limited to, the following:¶~~

~~(a) When the misconduct occurred a separate discretionary case review.¶~~

~~(3) In professional standards cases where the Department determines that the conduct being relation to the fire service professional's or instructor's service as a fire service professional or instructor;¶~~

~~(b) Whether the fire service professional or instructor served time in prison or jail and the length of incarceration; viewed violates the certification standards established by the Board as mandatory grounds for denial or revocation as defined in OAR 259-009-0120(2), the Department will administratively process the denial or revocation.¶~~

~~(4) In professional standards cases based on a discharge for cause, the Department may stay any action on the fire service professional's certifications until a final employment arbitration determination has been made. The Department will administratively close cases in which an arbitrator's opinion finds that the underlying facts did not support the allegations of misconduct.~~¶

~~(e5) Whether restitu Department will defer review of discretionary conviction was ordered and if the fire service professional or instructor met all obligations;s, as defined in OAR 259-009-0120(3), when all of the fire service professional's certifications are lapsed. Upon receipt of an application for certification or a request for reinstatement, the Department will proceed with the review process.¶~~

~~(d6) When ther the fire service professional or instructor has ever been on parole or probation. If so, the date the parole or probation period expired or will expire;¶~~

~~(e) Whethe Department submits a discretionary professional standards case to the Fire Policy Committee, the Department will notify the fire service professional. The notification will include the deadlines for the fire service professional or instruto provide evidence of factor-s thast more than one conviction and over what period of time;¶~~

~~(f) Whether the misconduct involved domestic violence;¶~~

~~(g) Whether the fire service professional or instructor self-reporay support mitigation. A fire service professional may provide mitigation evidence by one or both of the following:¶~~

~~(a) Submitting documents or written statements as supporting evidence for mitigation of the conduct under review to the Department for Fire Policy Committee and Board consideration.¶~~

~~(b) Arranging with the Department to attend the misconduct;¶~~

~~(h) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;¶~~

~~(i) Wha Fire Policy Committee meeting and present a verbal statement. The verbal statement is limited to a~~

maximum of five minutes and must be presented in person by the fire service professional or their representative.

(7) Fire Policy Committee Review of Discretionary Professional Standards Cases.

(a) In professional standards cases where the Department determines that the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that being reviewed violates the certification standards established by the Board as discretionary grounds for denial or revocation as defined in OAR 259-009-0120(3), the Department will submit its findings to the Fire service professional or instructor possesses the core values integral to the fire service profession; and Policy Committee for disposition. The Fire Policy Committee's disposition will be submitted as a recommendation to the Board for approval.

(b) The Fire service professional's or instructor's physical or emotional condition at the time of the conduct. Policy Committee will review the professional standards case to:

(A) Affirm, modify or negate the Department-identified violations;

(B) Identify aggravating and mitigating circumstances unique to the professional standards case; and

(5C) Where there is a reasonable basis to deny or revoke a fire service professional or an instructor, the Board and the Fire Policy Committee must:

(a) Determine how long the affected fire service professional or instructor will be ineligible to reapply for fire service certification. The period of ineligibility may range from 30 days to seven years; and

(b) Determine additional conditions. Determine how the violations and aggravating or mitigating circumstances impact the fire service professional's certification.

(c) Aggravating and mitigating circumstances are conditions, factors or actions that increase or decrease the total impact that the conviction has on certification as a fire service professional.

(A) Aggravating circumstances generally increase the severity of the impact the conviction has on certification and may, in addition to the conviction, be grounds to deny or revoke certification. Circumstances that may be considered aggravating include, but are not limited to, the degree of the conviction, prior misconduct or criminal behavior, lack of accountability, number of persons; if any, which must be satisfied prior to the eligibility to reapply for fire service certifications is restored. Involved in the underlying conduct, number of separate incidents, passage of time from date of incident or incidents, or any other circumstance the Department or the Fire Policy Committee consider aggravating given the specific issues in the case.

(B) Any application for certification submitted by an individual whose certification Mitigating circumstances do not excuse or justify the conduct, but generally decrease the severity of the impact the conviction has on certification. Circumstances that have been denied or revoked for mandatory grounds as defined in OAR 259-009-0070(2) will be denied pursuant to OAR 259-009-0130.

(6) It may be considered mitigating include, but are not limited to, written letters of support, truthfulness, cooperation during the incident or investigation, or any other circumstance the Department or the Fire Policy Committee consider mitigating given the specific issues in the case.

(8) Board Review of a Professional Standards Case. The Board will review the case, aggravation and mitigation, and the Fire Policy Committee's recommendations to determine whether or not to approve all or part of the Fire Policy Committee's recommendations.

(a) Upon initial consideration, the Board may either approve the recommendation in its entirety or defer a decision and return the recommendation to the Fire Policy Committee.

(b) The Board may approve the Fire Policy Committee's recommendation by a majority vote of the members present. Where the Fire Policy Committee's recommendation is to deny or revoke certification, the Notice of Intent issued under OAR 259-009-0130 will remain in effect.

(c) The Board, by a majority vote of the members present, may defer its decision and return the recommendation with instructions to the Fire Policy Committee to reconsider the recommendation. The Board may also instruct the Department to obtain further information and revise the case for a second review and recommendation by the Fire Policy Committee. The Board may return a recommendation only once.

(A) The Fire Policy Committee must reconsider its recommendation, along with the Board's instructions and any

new information the Department submits to the Fire Policy Committee.¶

(B) The Fire Policy Committee will submit a revised or renewed recommendation to the Board.¶

(d) The Board will review the revised or renewed recommendation to decide whether to approve all or part of the recommendation. The Board may approve the recommendation by a majority vote of the members present and may disapprove the recommendation by a two-thirds vote of the total voting members. A failure to achieve a two-thirds vote to disapprove a recommendation will result in the approval of the recommendation.¶

~~(A) When the Board disapproves a recommendation that proposes denial or revocation of certification, the Board will instruct the Department to withdraw the Notice of Intent issued under OAR 259-009-0130. ¶~~

~~(B) When the Board disapproves a recommendation that proposes no action be taken to deny or revoke certification, the Board must make its own determination as to whether the fire service professional or instructor has engaged in conduct that violates the discretionary grounds for denial or revocation of certification, and consider aggravation and mitigation and determine the ineligibility period. ¶~~

~~(C) The Board may identify their own findings or adopt all or any part of the Fire Policy Committee's findings as the basis for the determination. ¶~~

~~(D) If the Board proposes to take action that is adverse to a review results in a determination to deny or revoke fire service professional or instructor certifications, the Department will issue a contested case notice Notice of Intent pursuant to OAR 259-009-0130. Where the Board does not propose adverse a review results in no action to deny or revoke fire service professional certifications, the issued Notice of Intent will be withdrawn and the professional standards case will be closed. ¶~~

~~(7) Scope of Denial and Revocation. When the Department denies or revokes the certification of any fire service professional or instructor for mandatory fire service professional certifications pursuant to OAR 259-009-0115 through OAR 259-009-0130, the denial or revocation will encompass all fire service professional certifications subject to OAR chapter 259 division 9. ¶~~

~~(10) A fire service professional whose certifications have been denied or revoked for discretionary grounds, as defined in OAR 259-009-0070, the revocation will encompass all fire service certifications the Department has issued to that person 120(3), may apply for certification after a minimum of one year has passed since the Board's approval of the denial or revocation. ¶~~

~~(11) Applications for certification submitted by a fire service professional whose certifications have been denied or revoked will be denied pursuant to OAR 259-009-0130 when: ¶~~

~~(a) The certifications were denied or revoked for mandatory grounds as defined in OAR 259-009-0120(2); or ¶~~

~~(b) The certifications were denied or revoked for discretionary grounds as defined in OAR 259-009-0120(3) and the one-year period following Board approval of the denial or revocation has not passed.~~

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640, ORS 181A.650

AMEND: 259-009-0130

RULE SUMMARY: OAR 259-009-0130 captures the Notice of Intent and Contested Case Procedures that DPSST must follow under administrative law and the Attorney General's Model Rules. The revisions to this rule are technical or clean-up in nature and do not change any of the denial or revocation standards or processes.

CHANGES TO RULE:

259-009-0130

Issuance of Notice of Intent, Request for Hearing and Contested Case Procedures

~~(1) Initiation of Proceedings: Upon a determination by the Board, through the Fire Policy Committee, that the certifications of a fire service professional or instructor should be to proceed with a denial or revoked after considering the totality of the case, the Department will prepare a contested case notice and serve and serve a Notice of Intent on the fire service professional or instructor.~~

~~(2) Contested Case Notice:~~

~~(a) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.~~

~~(b) In discretionary cases heard by the Fire Policy Committee, the contested case notice.~~

(2) For discretionary professional standards cases when the Fire Policy Committee recommends denial or revocation of fire service professional certifications, the Department will be served the Notice of Intent on the fire service professional or instructor prior to the Board's review.

~~(3) Response Time:~~

~~(a) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the a Notice in which to file a written request for a hearing with the Department.~~

~~(b) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the a Notice in which to file a written request for a hearing with the Department.~~

~~(4) Default Orders:~~

~~(a) If the Department does not receive a timely request for a hearing is not received, the Contested Case Notice, the Notice of Intent will become a Final eOrder revokdenying or denyrevoking certification pursuant to OAR 137-003-0672.~~

~~(b) If a timely request for a hearing is not received in cases hearFor discretionary professional standards cases reviewed by the Fire Policy Committee, if the Contested Case NoticeDepartment does not receive a timely request for a hearing the Notice of Intent will become a Final eOrder denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation upon approval by the Board.~~

(5) Hearing Request: If the Department receives a timely request for a hearing, is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

~~(6) Proposed and Final Orders:~~

~~(a) In cases whereWhen a hearing is requested, pProposed eOrders, eExceptions, and fFinal eOrders will be issued pursuant to the applicable provision of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.~~

~~(b) Department-proposed amendments to a pProposed eOrder issued by an Administrative Law Judge in a case that was originally hearreviewed by the Fire Policy Committee and the Board must be considered and approved by the Fire Policy Committee before a final order can be issued.~~

~~(7) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.~~

~~(8) Appeal Procedure: A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the~~

Department and the Board before a Final Order can be issued.

Statutory/Other Authority: ORS 181A.410

Statutes/Other Implemented: ORS 181A.410, ORS 181A.630, ORS 181A.640, ORS 181A.650, ORS 183.341